

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JOSEPH JUAN BUTTERCASE,

Petitioner,

vs.

ROB JEFFREYS,

Respondent.

8:18CV131

MEMORANDUM AND ORDER

This matter is before the Court on several pro se motions filed by Petitioner Joseph Juan Buttercase, each of which will be addressed below.

I. MOTION FOR REPLACEMENT COUNSEL

In the first motion, Petitioner asks the Court to appoint him “competent and effective replacement counsel in this case.” [Filing No. 129 at 1](#). Petitioner retained his own counsel, and counsel for Petitioner entered his appearance on September 29, 2019. [Filing No. 72](#). Counsel completed substantive briefing in this matter on September 5, 2021, see [Filing No. 114](#), and counsel has not filed any further pleadings or motions since December 13, 2021. Petitioner indicates he requested his counsel to file a motion for status and judge written opinions in September 2022, but counsel did not do so despite counsel’s indication that he would. [Filing No. 129 at 1](#), ¶¶ 1–2. Petitioner further indicates that counsel will not accept Petitioner’s phone calls or respond to his correspondence. [Id.](#), ¶ 3. Petitioner states appointment of replacement counsel is necessary for effective discovery, investigation of his claims, and “to represent Petitioner for his colorable habeas corpus claims contained in his petitions for writ of habeas corpus [and] request for an evidentiary hearing.” [Id. at 2](#), ¶¶ 6, 9.

Upon consideration, the Court will deny Petitioner's Motion for Replacement Counsel without prejudice to reassertion. While Petitioner is frustrated with aspects of counsel's representation, the Court does not see any need for, or benefit of, the appointment of replacement counsel at this stage of the proceedings. Petitioner's habeas claims have been fully briefed by counsel, and the Court has not yet ruled on the pending motion for evidentiary hearing, [Filing No. 110](#), and for discovery, [Filing No. 115](#), filed by Petitioner's counsel. Until such time as the Court rules on the petition, supplemental petition, the parties' briefs, and Petitioner's pending motions for an evidentiary hearing and discovery, no action by counsel is required. Moreover, counsel has not been given the Court's leave to withdraw and, thus, remains Petitioner's attorney of record. See NEGenR [1.3\(f\)](#). If, after the Court rules on the pending matters in this case, Petitioner still desires replacement counsel to represent him, he may renew his motion.

II. MOTION TO PROCEED IN FORMA PAUPERIS

In conjunction with his request for replacement counsel, Petitioner filed a Motion to Proceed in Forma Pauperis. [Filing No. 130](#). As the filing fee has been paid in this matter, Petitioner's motion is denied as moot.

III. MOTION FOR STATUS

Petitioner also filed a motion inquiring into the status of his case. [Filing No. 131](#). Upon consideration, Petitioner's motion is granted. Petitioner is advised that the merits of his habeas petition are fully submitted and are currently under consideration by the Court, along with his request for an evidentiary hearing and discovery. While the Court understands Petitioner's frustration with the length of time a resolution on his petition

has taken, the time taken on addressing the many claims in the petition is testament to Petitioner's assessment of the length and complexity of the claims he presents. The Court assures Petitioner that resolution of his petition and pending motions is forthcoming.

IV. MOTION FOR JUDGE WRITTEN OPINIONS AND ORDERS

Finally, Petitioner "moves this Court for all opinions and orders to be authored only by Honorable Joseph F. Bataillon in this case." [Filing No. 132 at 3](#). Petitioner alleges the state trial court judge "mechanically adopted verbatim or 'rubber stamped' postconviction orders prepared and submitted or 'ghostwritten' by [the] Prosecutor," and such "verbatim adoption practice in his habeas corpus proceedings of findings of fact and decisions authored by anyone other than this Court would be fundamentally unfair and in violation of his federal constitutional rights to due process of law." *Id.* at 2–3, ¶¶ 7, 10.

The Court has not requested, nor received, any proposed orders from Respondent or from Petitioner in this case. Any written opinion issued in this matter will be the work of this Court with proper citation to any sources relied upon. As such, the Court will grant Petitioner's motion.

IT IS THEREFORE ORDERED that:

1. Petitioner's Motion for Replacement Counsel, [Filing No. 129](#), is denied without prejudice to reassertion.
2. Petitioner's Motion to Proceed in Forma Pauperis, [Filing No. 130](#), is denied as moot.


3. Petitioner's Motion for Status, [Filing No. 131](#), is granted. Petitioner is advised that the merits of his habeas petition and pending motions are fully submitted and are currently under consideration by the Court.

4. Petitioner's Motion for Judge Written Opinions and Orders, [Filing No. 132](#), is granted as set forth in this Memorandum and Order.

5. The Clerk of the Court is directed to send a copy of this Memorandum and Order to both Petitioner and counsel for Petitioner.

Dated this 17th day of June, 2024.

BY THE COURT:

A handwritten signature in black ink, appearing to read "J F Bataillon", with a stylized flourish at the end.

Joseph F. Bataillon
Senior United States District Judge